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SUBJECT: SPECIAL 301:PUSH FOR ADDITIONAL PROGRESS ON
INTELLECTUAL PROPERTY RIGHTS (IPR) ISSUES IN SPAIN

REF: A. (A) STATE 54527 (B) APRIL 11 2005 CALVERT-WILSON
E-MAIL

[1](#)B. (C) MADRID 00752 (D) MADRID 00724

[1](#)1. Summary: The GOS has agreed to an IPR Roundtable with the U.S. On April 8, the Council of Ministers approved and publicized the "Integrated Government Plan for the Reduction and Elimination of Activities Damaging Intellectual Property (http://www.mcu.es/gabipren/notas/2005/abril/c_ul_08_piratas.pdf). The plan makes provision for media campaigns and the creation of a working group to discuss how to deal with internet piracy. The GOS willingness to conduct an IPR Roundtable with the U.S., the government's ambitious anti-piracy plan, and the Supreme Court's recent vindication of Nike's trademark claims are favorable actions in the context of the Special 301 review (Ref A). End Summary

IPR ROUNDTABLE

[1](#)2. Following up on Commerce Assistant Secretary Lash's offer during his February 17 trip to Madrid (Ref C), the GOS has agreed to a one day U.S.-Spain IPR seminar. This will take place in September per the Commerce Department's concurrence (Ref B). Trade Officer is working with the Minister of Culture on finalizing a September date.

ANTI-PIRACY PLAN - GENERAL ASPECTS

[1](#)3. The anti-piracy plan contains five "blocks of measures". They include preventive actions; public awareness measures; legal measures; educational measures; and cooperation/collaboration measures. There are also four "urgent actions":
1) Ministry of Justice to ensure there are specialized prosecutors to facilitate quick prosecutions and establish uniform criteria for dealing with IPR crimes;
2) Ministry of Interior to establish a special police group to ensure coordination between law enforcement agencies;
3) Ministry of Industry, Tourism and Trade and Ministry of Culture to create a working group with relevant industry representatives to "establish mechanisms to detect and withdraw illicit content from the internet";
4) Signing an agreement between the Ministry of Culture and Spanish Federation of Municipalities and Provinces to create a "piracy map" in Spain with a view to determining where to concentrate IPR-related law enforcement efforts.

ANTI-PIRACY PLAN - ELEMENTS RELATED TO SPECIAL 301 DEMARCHE (REF A)

[1](#)4. The anti-piracy plan makes provision for Ministry of Culture, Ministry of Education, Ministry of Industry, Tourism and Trade, Ministry of Labor, Ministry of Health and Consumer Affairs media campaigns. The campaigns are supposed to be executed 12 months from when the the "Intersectoral Commission" is created. This Commission will be composed of relevant government representatives and IPR stakeholder representatives and will have a permanent Secretariat. The Commission will be charged with monitoring and managing the implementation of the plan. The plan envisages three months from April 8, 2005 for approval of a Royal Decree establishing the Commission. The media campaigns should, therefore, be executed during the July, 2005 - July, 2006 timeframe.

[1](#)5. With respect to the issue of managing content on the

internet, the Ministries of Culture and Industry, Tourism and Trade will invite content providers, technology industry representatives, and internet service providers to participate in a working group to "detect and withdraw" non-authorized content from the internet. The plan envisages self-regulation in this area. There is no due date for the establishment of this working group.

REACTIONS TO THE PLAN

16. An unscientific press survey indicates that reactions to the plan vary from the positive to the skeptical. Predictably, the pro-government daily El Pais came out in favor. Equally predictably, the opposition conservative party culture spokesperson said it was "it is better than nothing, but it is closer to nothing". The General Society of Authors (SGAE) said this project "puts Spain for the first time in the vanguard in Europe in the struggle against one of the most prolonged instances of aggression that the cultural and creative industries have suffered". The Actors and Performers Association said the plan constitutes a "starting point". The Anti-Piracy Federation (FAP) said the plan "is ambitious and contains the necessary measures", although perhaps the government should appoint somebody to serve as a point of contact between government agencies and private sector stakeholders. The Business Software Alliance (BSA) said the plan is very oriented to creators of cultural products and that it should develop a more software oriented posture because software related piracy losses in Spain amounted to 421 million Euros a year and the loss of 6,000 jobs. The Spanish Association for Intellectual Property Rights (Aedpi) shares the BSA view and added that there must be compensation for private copying in all formats, including ADSL, not just CDs and DVDs. The Music Producers Association (Promusicae) said it was favorably inclined towards the plan, but it wanted "more operational measures". The Technology Companies Association (Aetic) said the plan establishes "the base to define" the struggle against piracy.

NIKE CASE

17. On March 28, 2005, the Civil Chamber of the Spanish Supreme Court ruled that Nike's former partner, Cidesport, could not use a trademark similar to Nike's. The court also dismissed Cidesport's invalidity actions against Nike's trademark. What this means in practical terms is that Nike can now use its trademark name and swoosh on apparel in Spain. Nike's law firm in Spain, Gomez-Acebo & Pombo, characterized this in an April 6 letter to trade officer as a "total victory" for Nike. The firm also expressed gratitude for the U.S. Embassy's work on behalf of Nike, especially former Ambassador Argyros' and the Economic Section's efforts.

COMMENT

18. Skeptics have a point about the plan. It is long on description, calls for more analysis, and lists actions generally without deadlines for accomplishment. There are also no performance measures. Clearly, the government does not want to take more punitive measures against consumers without having conducted public awareness campaigns. Moreover, given the different industry interests involved, it would prefer ISPs, technology companies and content providers to find a way to police the internet without having to make the necessary tradeoffs itself. But the plan is also very clear that IPR piracy is a bad thing and that something needs to be done about it. The GOS is seized with the issue because local artists have done a good advocacy job with the GOS. Vice President (Deputy Prime Minister) Teresa Fernanda de la Vega told Charge when he met with her that she had the day before met with music industry representatives, and that she was conscious of the magnitude of the problem (Ref D). Protecting artists - a goal repeatedly expressed in the plan - is an argument that resonates in Spain. Also, this government may be especially sensitive to artists' concerns given that many prominent artists have Socialist sympathies.

American interest in the issue has also had an impact.
Assistant
Secretary Lash's visit highlighted the importance we attach

SIPDIS
to the
issue. Our representations to the government have
influenced the anti-
piracy plan. For instance, beyond the media campaigns and
working
group we stressed per the Ref A Special 301 demarche, the
government
acknowledges that it needs to clean up the restaurant and
bar sector
with respect to IPR violations - that is probably a first
this has
happened in Spain. Given the IPR stakeholders' generally
cautious to
positive embrace of the plan, Embassy believes this year
old government
should have the opportunity to work the piracy issue
without Spain
being on the watchlist. Moreover, it would not be timely
to put Spain
on the list when the judiciary has finally resolved Nike's
trademark
dispute, a 14 year thorn in U.S.-Spanish economic
relations. The
upcoming September U.S.-Spain IPR roundtable will be a good
opportunity
to work with the GOS with the anti-piracy plan as the basis
upon which
we can evaluate Spanish IPR performance.

MANZANARES